

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. Nos. 625 & 1642/HYD/2019
Assessment Years: 2014-15 & 2015-16

DCIT, Circle-2(2), HYDERABAD	Vs	M/s.The Nizam Sugars Limited, HYDERABAD [PAN: AAAC7969A]
(Appellant)		(Respondent)

For Revenue : Shri Ravi Kiran, CIT-DR

For assessee : Shri S.Phanindra for
Shri A.V.Raghuram, AR

Date of Hearing : 15-06-2021

Date of Pronouncement : 19-07-2021

ORDER

PER S.S.GODARA, J.M. :

These two Revenue's appeals for AYs.2014-15 & 2015-16 arise against the CIT(A)-12 & CIT(A)-2, Hyderabad's separate orders; dated 25-01-2019 & 18-09-2019 passed in case Nos.10235/2018-19 & 10363/2017-18/CIT(A)-2, involving proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case files perused.

2. The Revenue's instant twin appeals raise identical substantive grievance that the CIT(A) has erred in law and on facts in reversing the Assessing Officer's action invoking Section 43B disallowance of Rs.7,01,46,591/- and Rs.6,98,06,890/-; respectively. The CIT(A)'s identical detailed discussion to this effect reads as under:

"5.3 I have carefully considered the submissions of the appellant as well as the order of the Assessing Officer. Section 43B of the Income Tax Act reads as under:

«43B 'Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable' under this Act in respect of-

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution (or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, [or]

e) any sum payable by the assessee as interest on any [loan or advance] from a scheduled bank [or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank] in accordance with the terms and conditions of the agreement governing such loan [or advances], [or]

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him"

As can be seen from a plain reading of the section, it applies to interest payable on loans taken from Public Financial Institutions, State Finance Corporation or State Industrial Investment Corporation, -and not to all interest payments made to State Government. The Assessing Officer, in the assessment order, has himself observed that the borrowings on which interest is paid by the assessee are from Government of A.P. and Government Corporations like APRDC and APCSC. However in the instant case the APRDC and APCSC are not come under the purview of State Financial Corporation and State Industrial Investment Corporation, hence the above institutions does not fit into the provisions of Section 43B(d). The ITAT, Delhi in the

case of *Ramala Sahkari Chini Mills Ltd Vs. ACIT (ITA No.6452/DeI/2014)*, while deciding a similar issue, observed as under:

“We have carefully considered the rival contentions. Assessee that accumulated amount of interest accrued and due but not paid to various unsecured loan and therefore the provisions of section 43(d) was invoked by the Ld.A.O. However out of Rs.3,63,59,677/- only Rs.15,24,100/- has been charged to the profit and loss account on account of interest accrued and due but not paid. In view of this CIT(A) restricted the disallowance to Rs.15,24,100/- only. In ITA No. 6157/DEL/2012 for assessment year 2007-08 in para number of 7 of the order it is held that if the interest in question is payable to Government of India and Uttar Pradesh government. section 43B(d) does not apply. No other contrary decision was brought to our notice. In view of this, following the decision of coordinate bench, we reverse the finding of CIT(A) confirming the disallowance u/s 43B(d) of Rs.1524100/-”.

In view thereof, Section 43B will not apply to interest payments to Government of AP and to Government Corporations APRDC and APCSC. It is not clear as to whom the interest on purchase tax loan is payable to. The A.O. is therefore directed to delete the addition to that extent, after verifying which loans have been taken from State Government. The appellant would therefore get relief to that extent”.

3. A perusal of the foregoing lower appellate discussion makes it clear that the CIT(A) has partly restricted the Assessing Officer's action invoking Section 43B disallowance *qua* interest payments made to the Government of Andhra Pradesh and its corporations 'APRDC' and 'APCSC' in tune with clause (d) of the foregoing statutory provision granting exemption to public financial institutions. It is therefore very much apparent that the Revenue's assertion seeking to revive the entire Section 43B disallowance is found to be against the facts on record. We next note that this tribunal's order in assessee's case itself involving Revenue's appeal ITA No.1239/Hyd/2019 for AY.2016-17 decided on 24-03-2021 has upheld the CIT(A)'s identical action. We thus adopt judicial

consistency to reject the Revenue's instant sole substantive grievance in both these appeals.

4. Learned departmental representative next invited our attention to the Revenue's petition dt.15-06-2021 seeking to raise an additional ground that the CIT(A) has erred in law and on facts in accepting the assessee's interest payments on loan (supra) despite the fact that no TDS has been deducted u/s.194A of the Act which attracts Section 40(a)(ia) disallowance.

5. We have given our thoughtful consideration to rival pleadings. Suffice to say, the hon'ble apex court's landmark decision in National Thermal Power Co. Ltd., Vs., CIT [229 ITR 383] (SC) as considered in tribunal's Special Bench's decision All Cargo Global Logistics Ltd., Vs. DCIT (2012) [137 ITD 217](SB) (Mumbai), holds that *this tribunal can very well entertain a new ground going to root of the matter so as to determine correct tax liability of a taxpayer provided all the relevant facts are already on record.* We go by the very analogy and allow the department's foregoing petition and decline assessee's objections against the same.

6. Coming to merits of the impugned additional ground in both these assessment years, the fact remains that the Assessing Officer had made any disallowance u/s.40(a)(ia) of the Act. The question as to whether such a disallowance could be made in Section 251(1)(a) proceedings for the first time is found to have been decided in assessee's favour and against the department in CIT Vs. Shapoorji Pallonji Mistry (1962)

44 ITR 891 (SC). We therefore decline Revenue's additional substantive ground in foregoing terms.

7. These two Revenue's appeals are dismissed. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 19th July, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Hyderabad,
Dated: 19-07-2021

TNMM

Copy to :

1.The DCIT, Circle-2(2), Hyderabad.

2.M/s.The Nizam Sugars Limited, 5-10-174, Shakkar Bhavan, Fateh Maidan Road, Hyderabad.

3.CIT(Appeals)-12, Hyderabad.

4.CIT(Appeals)-2, Hyderabad.

5.Pr.CIT-II, Hyderabad.

6.D.R. ITAT, Hyderabad.

7.Guard File.